

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEREMY MICHAEL DANGERFIELD,

Defendant-Appellant.

UNPUBLISHED

April 21, 2011

No. 295371

Ionia Circuit Court

LC No. 09-014332-FH

Before: SHAPIRO, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right from his jury convictions of operating a vehicle while intoxicated, third offense, MCL 257.625(1)(9)(c), and driving while license suspended, MCL 257.904(3)(a). On appeal, defendant challenges the trial court's denial of his motion to suppress evidence obtained as a result of the initial stop of defendant's vehicle. For the reasons set forth in this opinion, we affirm.

The parties stipulated that defendant was stopped by Officer Vanderhoek on March 13, 2009 at approximately 2:11 a.m. At that time, Officer Vanderhoek observed defendant's Jeep Cherokee approaching him, traveling east on Lincoln Avenue. Officer Vanderhoek testified that he observed what he believed to be, an inoperable head lamp on the Jeep Cherokee's passenger side. Based on this observation, Officer Vanderhoek made a U-turn and stopped defendant's Jeep Cherokee. Subsequent questioning revealed that defendant did not have a valid driver's license and that he had consumed alcohol. Following his arrest, defendant's blood alcohol level was measured at .25.¹

Prior to trial, defendant brought a motion to suppress the evidence obtained as a result of the stop on the grounds that the police lacked probable cause to stop his Jeep Cherokee. Two recordings were made of the incident and introduced into evidence during the suppression hearings. One of the recordings was made from a camera located in Officer Vanderhoek's vehicle. Another recording came from a camera located in a vehicle driven by Officer Sthal. Sthal arrived at the scene following the stop made by Officer Vanderhoek. Both recordings

¹ Defendant does not challenge the length of the stop.

show defendant's vehicle from the front. After hearing arguments and reviewing the recordings made of the incident, the trial court ruled that the recordings clearly demonstrated that there was a marked difference in the amount of light emanating from each light, with the front passenger light having a different hue than the other front head lamps. The trial court further theorized that defendant could have been operating with his bright lights on when passing Officer Vanderhoek or that one of the lights was a parking light. The trial court also concluded that the two illuminated head lamps were not emitting white light, as required by MCL 257.685(1); MCL 257.699(a). The trial court used its findings to conclude that Officer Vanderhoek had probable cause to effectuate the stop. Following denial of his motion for suppression of the evidence obtained as a result of the stop, defendant was convicted of the charges listed above. This appeal ensued.

This Court reviews a trial court's findings at a suppression hearing for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). This Court will not disturb a trial court's ruling at a suppression hearing unless that ruling is found to be clearly erroneous. Resolution of facts about which there is conflicting testimony is a decision to be made initially by the trial court. *People v Burrell*, 417 Mich 439, 449; 339 NW2d 403 (1983), while questions of law and the decision on the motion are reviewed de novo. *People v Jones*, 249 Mich App 131, 135; 640 NW2d 898 (2002). A finding is clearly erroneous when it leaves this Court with a definite and firm conviction that the trial court made a mistake. *People v Waclawski*, 286 Mich App 634, 693; 780 NW2d 321 (2009).

Defendant contends that the trial court clearly erred by failing to invoke the exclusionary rule and suppress the evidence obtained as a result of what he claims was an unconstitutional stop. The exclusionary rule providing for suppression of unlawfully obtained evidence derives from protections contained in the United States Constitution. U.S. Const, Am IV ensures the following:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourth Amendment jurisprudence is tethered to protecting citizens from *unreasonable* searches and seizures. See, *Terry v Ohio*, 392 US 1, 9; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *United States v Brignoni-Ponce*, 422 US 873, 878; 95 S Ct 2574; 45 L Ed 2d 607 (1975); *United States v Sharpe*, 470 US 675, 682; 105 S Ct 1568; 84 L Ed 2d 605 (1985). The reasonableness of a Fourth Amendment seizure balances the governmental interest that justifies the intrusion against an individual's right to be free of arbitrary police interference. *People v Faucett*, 442 Mich 153, 157; 499 NW2d 764 (1993). When making a determination as to the reasonableness of a stop for a traffic violation, the United States Supreme Court has stated: "An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v United States*, 517 US 806, 810; 116 S Ct 1769; 135 L Ed 2d 89 (1996). Based on federal precedent, our State's jurisprudence has held that: "Probable cause requires a quantum of evidence 'sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a

reasonable belief' of the accused's guilt." *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003), quoting *People v Justice (After Remand)*, 454 Mich 334, 344; 562 NW2d 652 (1997). In addition, the federal constitutional protections against unreasonable searches and seizures have been extended to state proceedings through the Due Process Clause of the Fourteenth Amendment. See, *Mapp v Ohio*, 367 US 643, 655; 81 S Ct 1684; 6 L Ed 2d 1081 (1961); *People v Nash*, 418 Mich 196, 211; 341 NW2d 439 (1983). Because the Michigan Constitution does not provide more protection than its federal counterpart, under the circumstances of this case, consideration of defendant's motion for exclusion of the breathalyzer test necessarily implicates his federal as well as his state constitutional rights. See *People v Toohey*, 438 Mich 265, 270-271; 475 NW2d 16 (1991), and *People v Collins*, 438 Mich 8, 25-31; 475 NW2d 684 (1991). *Faucett*, 442 Mich at 157.

Our State's jurisprudence, derived from federal Fourth Amendment mandates, holds that if an officer has probable cause to believe that a traffic violation has occurred or was occurring, the resulting stop is reasonable and does not violate the Fourth Amendment. *People v Marcus Davis*, 250 Mich App 357, 363; 649 NW2d 94 (2002); *Williams*, 472 Mich at 314.

In the present case, the trial court correctly found that the officer had probable cause to effectuate a constitutionally permissible stop of defendant. Despite defendant's assertions that his vehicle had two operating head lamps, the trial court, after careful review of the evidence presented, found that at the time that the officer saw defendant's vehicle pass by him, defendant's vehicle may have had a defective head lamp. The video recordings offered, convinced the trial court that the light emanating from the passenger side head lamp was of a different color, and therefore the officer possessed probable cause to effectuate the stop. Our review of the evidence and the trial court's opinion, does not lead us to conclude that those findings were clearly erroneous or that the trial court failed to apply the proper legal standard.

Defendant, citing *United States v Freeman*, 209 F3d 464 (CA 6, 2000), argues that a mere *de minimis* violation of the traffic code does not give rise to reasonable suspicion for an investigative stop. In *Freeman*, the Sixth Circuit stated that "one isolated incident of a large motor home partially weaving into the emergency lane for a few feet and in an instant in time," constituted probable cause to effectuate a constitutionally permissible stop. *Id.* at 466. The Court went on to hold that the "the reasonableness of the stop is ascertained by determining first 'whether the officer's action was justified at its inception.'" *Id.* Whereas one isolated incident of a large motor home partially weaving into an emergency lane for a few feet in a brief time period does not constitute probable cause for a finding that the driver failed to keep his vehicle within a single lane of traffic, the facts presented in this case are vastly different. The initial observations of Officer Vanderhoek, confirmed by the trial court's review of the video evidence presented in this case, underscores that the focus of the inquiry into whether the initial stop was justified depends on the officer's observations at the inception of the stop. Contrary to *Freeman*, where the Court found that a brief swerve into an emergency lane for a short time was not sufficient evidence to constitute probable cause that a traffic violation had occurred, the evidence presented in this case required the trial court to ascertain whether probable cause existed at the inception of the stop to believe that defendant was in violation of MCL 257.685(1) and/or MCL 257.699(a). As stated previously, the trial court did not clearly err in making that factual determination.

Additionally, in accord with MCL 257.683(2), even if the officer did not possess probable cause to effectuate a stop, he had reasonable grounds to believe that a violation of MCL 257.685(1) and/or MCL 257.699(a) had occurred. In *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999), this Court stated that “on reasonable grounds shown, a police officer may stop and inspect a motor vehicle for an equipment violation.” Courts determine the reasonableness of an officer’s suspicion on a case by case basis taking into account the totality of all the facts and circumstances. See, *People v LoCicero (After Remand)*, 453 Mich 496, 501-502; 556 NW2d 498 (1996). In determining whether Officer Vanderhoek acted reasonably in this case, we examine the specific reasonable inferences which he was entitled to draw from the facts in light of his experience. See, *Terry*, 392 US at 27. As previously noted, at the time that Officer Vanderhoek effectuated his stop of defendant’s vehicle, the evidence presented in this matter leads us to conclude that he had a reasonable belief, based on objective and verifiable evidence, that there existed a significant difference in the illumination of the two head lamps on defendant’s Jeep Cherokee. Based on his observations that the light emanating from the passenger side of the Jeep Cherokee was amber in color and therefore possibly not coming from an operable head lamp, it was reasonable for Officer Vanderhoek to conclude that defendant’s passenger head lamp was not operating properly. Based on Officer Vanderhoek’s reasonable suspicion to initiate an investigative stop based on his belief that defendant was violating the Motor Vehicle Code, the stop was additionally permissible under MCL 257.683(2).

Affirmed.

/s/ Douglas B. Shapiro
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello